APPENDIX

In The

DISTRICT COURT OF APPEAL OF FLORIDA

Third District

January Term, A.D. 1966

Case No. 65-678

IN THE INTEREST OF:

T. W. P.

Opinion filed March 29, 1966.

HENDRY, Chief Judge.

After a hearing on a petition before the Juvenile and Domestic Relations Court of Dade County, the juvenile court judge by order of May 17, 1965, found that the appellant, a child born July 2, 1949, was a delinquent within the meaning of Chapter 39, Fla.Stat., F.S.A., in that the child remained away from home from April 11, 1965 until May 6, 1965 without the consent and knowledge of his parents. It was ordered that the child be released to the custody of the child's parents and that he be placed under the supervision of an officer of the court for a probationary period until further order of the court. Upon a petition for rehearing, the juvenile court judge by order dated July 21, 1965, found that the child had violated the terms of probation by leaving home without the consent of his parents and that he had been implicated in a breaking and entering, a strong arm robbery and an automobile theft. It was ordered that the child be committed to the Florida School for Boys for the period of his minority unless he is sooner legally discharged therefrom.

The appellant's sole contention on this appeal is that the failure of the juvenile and domestic relations court to advise him, an indigent, of his right to counsel and to appoint counsel in his behalf was a violation of the sixth and fourteenth amendments of the Federal Constitution.[1] In support of this contention, the appellant relies on decisions from the District of Columbia and California.

In Shioutakon v. District of Columbia, 236 F.2d 666, (D.C.Cir.1956) the United States Court of Appeals, District of Columbia Circuit, held on page 670 that their "concern for the fair administration of justice impells us to hold that, in this and in similar cases in the future, the juvenile [in a juvenile court] must be advised that he has a right to engage counsel or to have counsel named on his behalf." In footnote 18 on page 669 of the same opinion the court indicated that they did not reach considerations of due process requirements since the holding rested on their view of the applicable statute. Chief Judge Prettyman speaking for the same court in Pee v. United States, 274 F.2d 556, (D.C.Cir.1959), reviewed the treatment provided by our society for alleged offenders against its laws and stated on page 558 that, "in the event a child commits an offense against the law, the state assumes a position as *parens patriae* and cares for the child. Such a one is not accused of a crime, not tried for a crime, not convicted of a crime, not deemed to be a criminal, not punished as a criminal, and no public record is made of his alleged offense. In effect, he is exempt from the criminal law." Judge Prettyman determined that juvenile court proceedings are not criminal cases and found that this proposition is supported by decisions of the highest courts

[1]Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799.

in forty-two states, and by statutes in the other eight (citing Florida-Ex parte Kitts, 109 Fla. 202, 147 So. 573, 575 [1933]). From this he concluded on page 559 that, "the constitutional safeguards vouchsafed a juvenile in such proceedings are determined from the requirements of due process and fair treatment, and not by the direct application of the clauses of the Constitution which in terms apply to criminal cases." Then in Kent v. United States, 343 F.2d 247, 256 (D.C.Cir.1964), it was indicated that, " 'due process' and 'fair treatment' in this context mean that the juvenile shall be dealt with in a reasonable and decent manner which gives due regard to his claims upon society as well as to the latter's claims upon him." It is interesting to note that the Municipal Court of Appeals for the District of Columbia in opinions filed after the Shioutakon case, supra, but considering hearings which occurred prior to that decision concluded that its previous holding that in a juvenile delinquency proceeding failure to advise the juvenile of his right to counsel did not constitute a denial of due process was sound and adhered to it.[2]

The Second District Court of Appeal of California in the case of In re Contreras, 109 Cal.App.2d 787, 241 P.2d 631, 633 (1952) said, "Surely, a minor charged in the juvenile court with acts denounced by law as a felony does not have lesser constitutional rights or guaranties than are afforded an adult under similar circumstances in the Superior Court." The same court in a later opinion[3] concluded that a juvenile court has no duty to advise minors of their right to be represented by counsel since that duty

[2]Swann v. District of Columbia, D.C. Mun.App. 1959, 152 A.2d 200; In re Schaeffer, D.C.Mun.App. 1956, 126 A.2d 870.

[3]People v. Fifield, 136 Cal.App.2d 741, 289 P.2d 303 (1955).

applies only to prosecutions for crime. It was stated that there was nothing in In re Contreras, supra, contrary to this conclusion. The California Supreme Court then held that:

> "The fact that a minor is not represented by counsel need not be a denial of due process in the juvenile court . . . It is only when by such lack of representation of the minor undue advantage is taken of him or he is otherwise accorded unfair treatment resulting in a deprivation of his rights that it can be said he has been denied due process of law."[4]

The Governor's Special Study Commission on Juvenile Justice, pt. II, p. 11 (1960), concluded from these decisions, "that although a minor may engage counsel to represent him in the juvenile court and the court must hear counsel, the court need not inform either the minor or his parents that counsel may be obtained nor is the court responsible for seeing that counsel is provided indigent parties who desire such representation."[5]

Justice Thornal, speaking for our Supreme Court in Noeling v. State, Fla.1956, 87 So.2d 593 said at page 596:

> "It is perfectly obvious from an examination of the language of the entire Act [Juvenile Court

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[4]People v. Dotson, 46 Cal.2d 891, 895, 299 P.2d 875, 877.

[5]McKesson, Right To Counsel In Juvenile Proceedings, 45 Minn. L.Rev. 843, 849 (1961); on page 850, Mr. Kesson remarks that the Governor's Commission recommended legislation requiring juvenile court judges to notify minors and their parents of the right of representation by counsel, but that the recommendation was deleted before the legislature adopted the commission's other recommendations.

> Act, Chapt. 39, Fla.Stat., F.S.A.] as well as the consideration of its legislative history and its historical background that it was the purpose and intent of the Legislature in enacting the Act under consideration to provide a forum which could consider the problems of dependent children in an informal fashion without the necessity of applying the strictness and technicalities that often accompany routine legislation."

Although we are cognizant of the fact that the legislature by § 1, Chapter 57-257, Laws of Florida 1957, deleted the words, "in an informal manner" from that portion of the Juvenile Court Act concerning the conduct of a hearing,[6] we are of the opinion that Justice Thornal's statement above, remains, in substance, applicable to juvenile court proceedings concerning both dependent and delinquent children. From a review of the procedure provided by our legislature in the Act there can be no question that a proceeding before the juvenile court is not a criminal procedeing, thus the constitutional and statutory

[6] § 39.09(2), Fla.Stat., F.S.A. which now reads:

"Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases in the circuit courts, and adjourning the hearings from time to time as necessary. All such hearings, except as hereinafter provided, shall be open to the public and no person shall be excluded therefrom except on special order of the judge, who, in his discretion may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. In any event, all hearings involving unwed mothers, custody or placement of illegitimate children shall remain confidential and closed to the public as heretofore. Hearings in such cases involving more than one child may be held simultaneously where the several children involved are related to each other or were involved in the same transactions. The child and the parents or legal custodians of the child may be examined separately and apart from each other. This subsection shall not be applicable to hearings before the judge as committing magistrate."

rights given to persons charged with crime are not applicable to such proceedings. Nor has the legislature provided in the Act that a juvenile must be advised that he has a right to engage counsel or to have counsel named on his behalf, and our view of the act is that the legislature did not intend that a juvenile have this right in a juvenile court proceeding.

We therefore conclude that the proceedings in respect to appellant have been in compliance with statutory requirements and that the constitutional requirements guarantied one accused of crime are not applicable. The order appeal will stand affirmed.

Affirmed.

In The

SUPREME COURT OF FLORIDA

July Term, A. D. 1966

Case No. 35,310

IN THE INTEREST OF:

T. W. P.,

Appellant.

Opinion filed December 7, 1966

PER CURIAM.

It appears from the Appellee's brief that on May 6, 1966 the juvenile Appellant, T.W.P., was released from the Florida School for Boys at Okeechobee. In the oral argument before us Appellant's counsel did not dispute the fact Appellant had been released. This being so, no useful purpose would be served to adjudicate the merits of the appeal since a hearing de novo in the juvenile court, if granted, would not afford Appellant any greater relief than he enjoys under his release.

Furthermore, the juvenile proceedings herein are not criminal proceedings and no stigma attached to the Appellant growing out of such proceedings which would justify reaching back of the release and vitiating the adjudication in the juvenile court.

The appeal is dismissed.

EXCERPTS FROM FLORIDA JUVENILE COURT ACT

39.01 Definitions.—When used in this chapter:

(11) "Delinquent child" means a child who commits a violation of law, regardless of where the violation occurred; or is incorrigible; or is a persistent truant from school; or who is beyond the control of the child's parent or other legal custodian; or who associates with criminals, reputed criminals, or vicious or immoral persons; or is growing up in idleness or crime; or whose occupation, behavior, or associations are such as to injure or endanger the welfare of the child or the welfare of others; or who is found in a place predominantly used for selling intoxicating drinks for consumption on the premises.

39.02 Jurisdiction.—

(1)(a) The juvenile court shall have exclusive original jurisdiction of dependent and delinquent children domiciled, living or found within the county or district in which the court is established. The juvenile court of the county or district in which the child is found shall assume jurisdiction of the child, which jurisdiction shall be exclusive unless the judge thereof, upon approval of the judge of the juvenile court of the county or district in which is located the domicile or usual residence of the child, shall transfer the case and child to the latter court, before or after hearing, in which event the latter court shall thereafter exercise exclusive jurisdiction; provided, however, if the judge shall find that any child brought into juvenile court who, if an adult, would be charged

with violating a federal law, state law or city ordinance relating to the operation or use of a motor vehicle, the judge may enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult.

(5) When jurisdiction of any child shall have been obtained, the court shall retain jurisdiction, unless relinquished by order, until the child reaches twenty-one years of age; provided, that this shall not prevent the exercise of jurisdiction of any other court having jurisdiction in case the child, after becoming an adult, commits a violation of law.

(6) If the judge deems that any child brought into juvenile court as a delinquent child, who is fourteen years of age or older, and who, if an adult, would be charged with a violation of Florida law constituting a felony, should be transferred to the court which would have jurisdiction of the child if the child were an adult, or if any child brought into juvenile court as a delinquent child, and who, if an adult, would be charged with a violation of the laws of Florida, so demands prior to or at the commencement of the hearing before the court, the judge shall enter an order waiving jurisdiction and certifying the case to the court which would have jurisdiction of the child if the child were an adult, and thereafter the child shall be subject to the jurisdiction of the other court as if the child were an adult; provided, that a child sixteen years of age or older who, if an adult, would be charged with a capital offense, shall be so transferred; provided, further, that jurisdiction over any child trans-

ferred under the provisions hereof shall revert to and be reinvested in the juvenile court making the transfer in the event that no criminal charge is brought against such child in the court to which he is transferred by the end of the next term of said court which commences after such transfer, or in the event that a criminal charge brought within that time is nolle prosequied or dismissed, and no further charge is brought in said court within sixty days thereafter; providing further, that any child, irrespective of age, who, if an adult, would be charged within a violation of Florida law punishable by death or life imprisonment and such offense is presented to the grand jury who returns an indictment against said child, then the juvenile court shall waive its jurisdiction of said child for said offense and shall transfer the child to the proper court having jurisdiction to try said offense.

39.03 Taking a child into custody; detention.—

(7) No child taken into custody who has not been adjudicated to be a dependent or delinquent child shall be detained in custody longer than two days, excluding Sundays and legal holidays, unless a special order so directing is made by the judge, finding that the release of the child would be inimical to the welfare of the child or of the public, stating the reasons for such finding. The reasons for such finding shall be reviewable by appeal or in habeas corpus proceedings.

39.06 Process and service.—

(1) Personal appearance of any person in a hearing before the juvenile court shall obviate the necessity of serving process upon that person.

(2) Upon the filing of a petition containing allegations of facts which, if true, would constitute the child therein named a dependent or delinquent child found, living or domiciled within the county or district wherein the court is established, the court shall investigate and, if those facts appear to be true, a summons reciting briefly the substance of the petition shall be issued out of the juvenile court by the judge, counselor, or an assistant counselor, to the parents and legal custodians of the child named in the petition if their names and residences are ascertainable, and if not ascertainable then to any relative of the child whose name and residence is ascertainable, directing them to appear personally before the juvenile court at a time and place stated in the summons, which time shall not be less than twenty-four hours after service of the summons, and to bring the child before the juvenile court at that time and place if the child is not in custody by order of the juvenile court.

(3) If it appears from the petition that the child named therein is in such condition or surroundings that the welfare of the child requires that the child be taken into custody upon the filing of the petition, or if the petition alleges that the child has committed a violation of law, and the judge deems it advisable to do so, the judge may, by endorsement upon the summons, order that the child shall be taken into custody immediately, and in such case the person serving the summons shall forthwith take the child into custody.

(4) Witness subpoena shall be issued to any other person who will not otherwise appear and whose presence at the hearing is deemed necessary by the judge,

counselor, or assistant counselor, or is requested by the child or the parent or legal custodian of the child.

(5) It shall not be necessary to the validity of any juvenile court proceedings concerning a child that the parents or legal custodians of the child be present, if diligent search and inquiry have been made without success by the court to ascertain their identity and residences, or if the parents and legal custodians evade service of or ignore summons, but in that event the judge, counselor, or assistant counselor who made the search and injury shall file in the case a certificate as to those facts, and the judge may appoint a guardian ad litem for the child. This subsection shall not modify the provisions of subsection (4) of §39.11.

(6) The jurisdiction of the juvenile court shall attach to the child and case when the summons is served upon a parent or legal custodian of the child, or when the child is taken into custody with or without service of summons and before or after filing of a petition, whichever first occurs, and thereafter the juvenile court may control the child and case in accordance with this chapter.

(7) The process, summons, warrant, and orders of the juvenile court shall run throughout the state, as fully and effectively as the process of the circuit court.

(8) All process, orders, commitments to an industrial school, and other papers issued out of the juvenile court or by the judge thereof in the capacity of committing magistrate may be served or executed, as the judge may direct, by the counselor or an assistant coun-

selor of that juvenile court, or in the same manner as process issued out of a circuit court.

(9) No fee shall be paid for service of any process, orders, or other papers by a counselor or assistant counselor, but any expense incurred therein shall be paid out of the juvenile court fund, except expense incident to transportation of children to an industrial school, which expense shall be paid out of the fine and forfeiture fund of the county wherein the child was found. If any process, orders, or other papers are served or executed by any sheriff or constable, the sheriff or constable shall be compensated in accordance with law out of the funds of the county set aside for that purpose, and not out of the juvenile court fund.

39.07 No answer required.—No answer to the petition, nor any other pleading, need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose.

39.09 Hearing.—

(1) The hearing shall be held as soon as practicable after the petition is filed, but reasonable delay for the purpose of investigation or procuring counsel upon request of the child or a parent or legal custodian of the child shall whenever practicable be granted.

(2) Hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in equity cases in the circuit courts, and adjourning the

hearings from time to time as necessary. All such hearings, except as hereinafter provided, shall be open to the public and no person shall be excluded therefrom except on special order of the judge, who, in his discretion may close any hearing to the public when the public interest or the welfare of the child, in his opinion, is best served by so doing. In any event, all hearings involving unwed mothers, custody or placement of illegitimate children shall remain confidential and closed to the public as heretofore. Hearings in such cases involving more than one child may be held simultaneously where the several children involved are related to each other or were involved in the same transactions. The child and the parents or legal custodians of the child may be examined separately and apart from each other. This subsection shall not be applicable to hearings before the judge as committing magistrate.

39.10 Adjudication.—

(1) If the judge shall find that the child named in a petition is not a dependent or delinquent child, the judge shall enter an order so finding and dismissing the case.

(2) If the judge shall find that the child named in a petition is a dependent or delinquent child, the judge shall incorporate that finding in an order entered in the case, briefly stating the facts upon which the finding is made, and the juvenile court shall thereafter have full jurisdiction to deal with the child as a dependent or delinquent child.

(3) An adjudication by a juvenile court that a child

is a dependent or delinquent child shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction, nor to disqualify or prejudice the child in any civil service application or appointment.

39.11 Powers with reference to dependent or delinquent children.—

(3) Any commitment made to an industrial school shall be for an indeterminate period of time, any child so committed to be released when directed by the board of commissioners of state institutions rather than upon the order of the juvenile court committing the child, but no child shall be held in an industrial school under a commitment from a juvenile court after becoming twenty-one years of age. The juvenile court, in committing a child, shall not lose jurisdiction, but shall discontinue exercising active control over the child while the child is committed to the school. The board of commissioners of state institutions shall notify the juvenile court which committed the child to the school, at least thirty days before releasing the child, and the juvenile court may thereupon resume control and thereafter make orders for the supervision of the child as may be proper.

39.12 Seal; records; privileged information.—

(3) Juvenile court records except records of traffic violations, shall not be open to inspection by the public. All records, except those for traffic violations, shall be

inspected only upon order of the judge, by persons deemed by the judge to have a proper interest therein, except that a child and the parents or legal custodians of the child and their attorneys shall always have the right to inspect and copy any official record pertaining to the child. The judge may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the judge may deem proper, and may punish by contempt proceedings any violation of those conditions.

Criminal Court of Record

PROBATION DEPARTMENT

Dade County Miami, Florida

December 27, 1966

PHILIP N. WARE
Chief Probation Officer
Room 431
Metropolitan Justice Building
1351 N.W. 12th Street
Miami, Florida 33125
371-7161

Alfred Feinberg
Attorney at Law
223 S. E. 1st Street
Miami, Florida

Dear Mr. Feinberg:

Pursuant to your recent telephone request, please be advised that any information this office might receive from the Dade County Juvenile and Domestic Relations Court concerning former juvenile delinquency of persons awaiting sentencing in the Dade County Criminal Court of Record is that which the Judges of the Juvenile Court deem proper for presentence investigation use. I understand that the Juvenile Court Judges release this information of their former dispositions and adjudications in accordance with Chapter 39.12 (3), Flroida Statutes.

I might add that such information is used by this office in conjunction with that obtained from school records, law enforcement agencies, municipal courts, and personal

interviews with the defendant, his relatives, neighbors, friends, and employers to provide as complete a background summary as possible for the confidential use of the Criminal Court Judges.

I trust this explanation will clarify this matter.

Very truly yours,

Philip N. Ware
Chief Probation Officer

PNW:sh